

INCOME TAX REFORM

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the business income apportionment provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the apportionment of business income for income tax purposes by:
 - phasing in a requirement that certain taxpayers use only the sales factor to calculate the fraction for apportioning business income to the state;
 - allowing an optional apportionment taxpayer to choose between a single sales factor and an equally weighted method to calculate the fraction for apportioning business income to the state; and
 - requiring an optional apportionment taxpayer that chooses to apportion business income using the single sales factor method to continue to use the single sales factor method of apportionment in subsequent taxable years;
- ▶ provides a method for a taxpayer to determine if the taxpayer is an optional apportionment taxpayer; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-7-110, as last amended by Laws of Utah 2016, Chapters 311 and 323

59-7-302 (Effective 01/01/18), as last amended by Laws of Utah 2017, Chapters 181 and 268

59-7-311, as last amended by Laws of Utah 2016, Chapters 311 and 323

33 **59-7-312**, as last amended by Laws of Utah 2008, Chapter 283

34 **59-7-315**, as last amended by Laws of Utah 2008, Chapter 283

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **59-7-110** is amended to read:

38 **59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.**

39 (1) The amount of Utah net loss that shall be carried back or forward to offset income
40 of another taxable year is determined as provided in this section.

41 ~~[(2)-(a) Subject to the other provisions of this section, a Utah net loss from a taxable~~
42 ~~year beginning before January 1, 1994, shall be carried back three taxable years preceding the~~
43 ~~taxable year of the loss and any remaining loss shall be carried forward five taxable years~~
44 ~~following the taxable year of the loss.]~~

45 ~~[(b)-(i)]~~ (2) (a) Subject to the other provisions of this section, a taxpayer may:

46 (i) carry back a Utah net loss from a taxable year ~~[beginning on or after January 1,~~
47 ~~1994, may be carried back]~~ for three taxable years preceding the taxable year of the loss; and
48 ~~[carried]~~

49 (ii) carry forward a Utah net loss from a taxable year for 15 taxable years following the
50 taxable year of the loss.

51 ~~[(ii)]~~ (b) If ~~[an election is made to]~~ a taxpayer elects to forego the federal net operating
52 loss carryback, the taxpayer may not carry back a Utah net loss ~~[is not eligible to be carried~~
53 ~~back]~~ unless the taxpayer makes an election ~~[is made]~~ for state purposes.

54 (3) A taxpayer shall carry a Utah net loss ~~[shall be carried]~~ to the earliest eligible year
55 for which the Utah taxable income before net loss deduction, minus Utah net losses from
56 previous years that ~~[were applied or required to be applied]~~ a taxpayer applied or was required
57 to apply to offset income, is not less than zero.

58 (4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that a
59 taxpayer shall ~~[be carried]~~ carry to the year identified in Subsection (3) is the lesser of:

60 (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that
61 ~~[were]~~ a taxpayer carried to previous years; or

62 (ii) the remaining Utah taxable income before net loss deduction of the year identified
63 in Subsection (3) after deduction of Utah net losses from previous years that ~~[were carried or~~

64 ~~required to be carried]~~ a taxpayer carried or was required to carry to the year identified in
65 Subsection (3).

66 (b) (i) The amount of Utah net loss ~~[carried]~~ that a taxpayer carries back from a taxable
67 year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter
68 in a taxable year.

69 (ii) A taxpayer may carry forward a Utah net loss in excess of \$1,000,000 ~~[may be~~
70 ~~carried forward]~~.

71 (iii) A taxpayer may carry a remaining Utah net loss ~~[shall be available to be carried]~~ to
72 one or more taxable years in accordance with this section.

73 (5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of
74 another corporation may not deduct any net loss incurred by the acquired corporation prior to
75 the date of acquisition.

76 (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of
77 the state of incorporation.

78 (b) An acquired corporation may deduct the acquired corporation's net losses incurred
79 before the date of acquisition against the acquired corporation's separate income as calculated
80 under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or
81 business substantially the same as that conducted before the acquisition.

82 (6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation
83 that is acquired by a unitary group may deduct is calculated by:

84 (a) subject to Subsection (7):

85 (i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

86 (A) an amount determined by dividing the average value of the acquired corporation's
87 real and tangible personal property owned or rented and used in this state during the taxable
88 year by the average value of all of the unitary group's real and tangible personal property owned
89 or rented and used during the taxable year;

90 (B) an amount determined by dividing the total amount paid in this state during the
91 taxable year by the acquired corporation for compensation by the total compensation paid
92 everywhere by the unitary group during the taxable year; and

93 (C) an amount determined by ~~[÷(÷)]~~ dividing the total sales of the acquired corporation
94 in this state during the taxable year by the total sales of the unitary group everywhere during the

taxable year; ~~[and]~~ or

~~[(H) if the unitary group elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2)(b), multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by two; or]~~

(ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311~~(3)~~(2), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

(b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state~~[(+)(i)]~~ for that taxable year~~[- and (ii)]~~ in accordance with Section 59-7-311;

(c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and

(d) calculating the sum of:

(i) the amount calculated under Subsection (6)(c); and

(ii) the following amounts allocable to the acquired corporation for the taxable year:

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

(7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Section 2. Section **59-7-302 (Effective 01/01/18)** is amended to read:

59-7-302 (Effective 01/01/18). Definitions -- Determination of taxpayer status.

(1) As used in this part, unless the context otherwise requires:

(a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.

(b) "Airline" means the same as that term is defined in Section 59-2-102.

(c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during

126 the airline's tax period.

127 (d) "Business income" means income arising from transactions and activity in the
128 regular course of the taxpayer's trade or business and includes income from tangible and
129 intangible property if the acquisition, management, and disposition of the property constitutes
130 integral parts of the taxpayer's regular trade or business operations.

131 (e) "Commercial domicile" means the principal place from which the trade or business
132 of the taxpayer is directed or managed.

133 (f) "Compensation" means wages, salaries, commissions, and any other form of
134 remuneration paid to employees for personal services.

135 (g) "Excluded NAICS code" means a NAICS code of the 2017 North American
136 Industry Classification System of the federal Executive Office of the President, Office of
137 Management and Budget, within:

138 (i) NAICS Code 211120, Crude Petroleum Extraction;

139 (ii) NAICS Subsector 2121, Coal Mining;

140 (iii) NAICS Subsector 2212, Natural Gas Distribution;

141 (iv) NAICS Subsector 311, Food Manufacturing;

142 (v) NAICS Subsector 3121, Beverage Manufacturing;

143 (vi) NAICS Code 327310, Cement Manufacturing;

144 (vii) NAICS Subsector 482, Rail Transportation; or

145 (viii) NAICS Code 522110, Commercial Banking.

146 ~~[(g)]~~ (h) (i) Except as provided in Subsection (1)~~[(g)]~~(h)(ii), "mobile flight equipment"
147 means the same as that term is defined in Section 59-2-102.

148 (ii) "Mobile flight equipment" does not include:

149 (A) a spare engine; or

150 (B) tangible personal property described in Subsection 59-2-102(27) owned by an air
151 charter service or an air contract service.

152 ~~[(h)]~~ (i) "Nonbusiness income" means all income other than business income.

153 ~~[(i) Subject to Subsection (2), "optional sales factor weighted taxpayer" means:]~~

154 ~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic~~

155 ~~activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales~~

156 ~~everywhere generated by economic activities performed by the taxpayer if the economic~~

~~activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or]~~

~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.]~~

(j) "Optional apportionment taxpayer" means a taxpayer described in Subsection (3).

(k) "Phased-in sales factor weighted taxpayer" means a taxpayer that:

(i) is not;

(A) a sales factor weighted taxpayer; or

(B) except as provided in Subsection (1)(k)(ii), an optional apportionment taxpayer; or

(ii) (A) meets the definition of an optional apportionment taxpayer; and

(B) apportioned business income using the method described in Subsection 59-7-311(4) during the previous taxable year.

~~[(f)]~~ (l) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

~~[(k)]~~ (m) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.

~~[(h)]~~ (n) ~~[Subject to Subsection (2), "sales]~~ "Sales factor weighted taxpayer" means[:] a taxpayer described in Subsection (2).

~~[(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:]~~

~~[(A) a NAICS code within NAICS Sector 21, Mining;]~~

~~[(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;]~~

~~[(C) a NAICS code within NAICS Sector 31-33, Manufacturing, other than NAICS~~

188 Code 336111, Automobile Manufacturing;]

189 ~~[(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;]~~

190 ~~[(E) a NAICS code within NAICS Sector 51, Information, other than NAICS Subsector~~

191 ~~519, Other Information Services; or]~~

192 ~~[(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or]~~

193 ~~[(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the~~

194 ~~taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if~~

195 ~~the economic activities are classified in a NAICS code of the 2002 or 2007 North American~~

196 ~~Industry Classification System of the federal Executive Office of the President, Office of~~

197 ~~Management and Budget, except for a NAICS code under Subsections (1)(i)(A) through (F).]~~

198 ~~[(m)]~~ (o) "State" means any state of the United States, the District of Columbia, the

199 Commonwealth of Puerto Rico, any territory or possession of the United States, and any

200 foreign country or political subdivision thereof.

201 ~~[(n)]~~ (p) "Transportation revenue" means revenue an airline earns from:

202 (i) transporting a passenger or cargo; or

203 (ii) from miscellaneous sales of merchandise as part of providing transportation

204 services.

205 ~~[(o)]~~ (q) "Utah revenue ton miles" means, for an airline, the total revenue ton miles

206 within the borders of this state:

207 (i) during the airline's tax period; and

208 (ii) from flight stages that originate or terminate in this state.

209 ~~[(2) The following apply to Subsections (1)(i) and (1):]~~

210 ~~[(a) (i) Subject to the other provisions of this Subsection (2), for each taxable year, a~~

211 ~~taxpayer shall determine whether the taxpayer is a sales factor weighted taxpayer.]~~

212 (2) (a) A taxpayer is a sales factor weighted taxpayer if, regardless of the number of

213 economic activities the taxpayer performs, the taxpayer generates greater than 50% of the

214 taxpayer's total sales everywhere from economic activities that are classified in a NAICS code

215 of the 2002 or 2007 North American Industry Classification System of the federal Executive

216 Office of the President, Office of Management and Budget, other than:

217 (i) a NAICS code within NAICS Sector 21, Mining;

218 (ii) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

(iii) a NAICS code within NAICS Sector 31-33, Manufacturing, except NAICS Code 336111, Automobile Manufacturing;

(iv) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

(v) a NAICS code within NAICS Sector 51, Information, except NAICS Subsector 519, Other Information Services; or

(vi) a NAICS code within NAICS Sector 52, Finance and Insurance.

~~[(ii)]~~ (b) A taxpayer shall ~~[make the determination required by Subsection (2)(a)(i)]~~ determine if the taxpayer is a sales factor weighted taxpayer each year before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

~~[(iii)]~~ (c) For purposes of making the determination required by Subsection (2)(a)~~[(i)]~~, total sales everywhere include only the total sales everywhere:

~~[(A)]~~ (i) as determined in accordance with this part; and

~~[(B)]~~ (ii) made during the taxable year for which a taxpayer makes the determination required by Subsection (2)(a)~~[(i)]~~.

(3) (a) A taxpayer is an optional apportionment taxpayer if the average calculated in accordance with Subsection (3)(b) is greater than .50.

(b) To calculate the average described in Subsection (3)(a), a taxpayer shall:

(i) calculate the following two fractions:

(A) the property factor fraction as described in Subsection 59-7-312(3); and

(B) the payroll factor fraction as described in Subsection 59-7-315(3);

(ii) add together the fractions described in Subsection (3)(b)(i); and

(iii) divide the sum calculated in Subsection (3)(b)(ii):

(A) except as provided in Subsection (3)(b)(iii)(B), by two; or

(B) if either the property factor fraction or the payroll factor fraction has a denominator of zero or is excluded in accordance with Subsection 59-7-312(3)(b) or 59-7-315(3)(b), by one.

(c) A taxpayer shall determine if the taxpayer is an optional apportionment taxpayer before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

~~[(b) (i) (A) Subject to other provisions of this Subsection (2), for each taxable year, a taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an optional sales factor weighted taxpayer.]~~

~~[(B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the apportionment options described in Subsection 59-7-311(4).]~~

~~[(ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make the determination before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.]~~

~~[(iii) For purposes of making the determination described in Subsection (2)(b)(i), total sales everywhere include only the total sales everywhere:]~~

~~[(A) as determined in accordance with this part; and]~~

~~[(B) made during the taxable year for which a taxpayer makes a determination described in Subsection (2)(b)(i):]~~

~~[(c)] (4) A taxpayer that files a return as a unitary group for a taxable year is considered to be a unitary group for that taxable year.~~

~~[(d)] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term "economic activity" consistent with the use of the term "activity" in the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.~~

Section 3. Section **59-7-311** is amended to read:

59-7-311. Method of apportionment of business income.

(1) For a taxable year, a taxpayer shall apportion all business income ~~[shall be apportioned]~~ to this state by multiplying the business income by a fraction calculated as provided in this section.

~~[(2) Subject to the other provisions of this part, a taxpayer, except for a sales factor weighted taxpayer and an optional sales factor weighted taxpayer, shall calculate the fraction for apportioning business income to this state using one of the following fractions:]~~

~~[(a) a fraction where:]~~

~~[(i) the numerator of the fraction is the sum of:]~~

~~[(A) the property factor as calculated under Section 59-7-312;]~~

~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

~~[(C) the sales factor as calculated under Section 59-7-317; and]~~

~~[(ii) the denominator of the fraction is three; or]~~

~~[(b) a fraction where:]~~

~~[(i) the numerator of the fraction is the sum of:]~~

~~[(A) the property factor as calculated under Section 59-7-312;]~~

~~[(B) the payroll factor as calculated under Section 59-7-315; and]~~

~~[(C) the sales factor as calculated under Section 59-7-317 multiplied by two; and]~~

~~[(ii) the denominator of the fraction is four.]~~

~~[(3)]~~ (2) Subject to the other provisions of this part, a sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state using a fraction where:

(a) the numerator of the fraction is the sales factor as calculated under Section 59-7-317; and

(b) the denominator of the fraction is one.

~~[(4)]~~ (3) Subject to the other provisions of this part, an optional ~~[sales factor weighted taxpayer]~~ apportionment taxpayer that is not a phased-in sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state ~~[using a method described in Subsection (2)(a), (2)(b), or (3).]~~ using one of the following fractions:

(a) the fraction described in Subsection (4); or

(b) the fraction where:

(i) the numerator of the fraction is the sum of:

(A) the property factor as calculated under Section 59-7-312;

(B) the payroll factor as calculated under Section 59-7-315; and

(C) the sales factor as calculated under Section 59-7-317; and

(ii) the denominator of the fraction is three.

(4) (a) Subject to other provisions of this part, a phased-in sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state as provided in Subsections (4)(b) through (d).

(b) For the taxable year that begins on or after January 1, 2019, but begins on or before December 31, 2019:

(i) the numerator of the fraction is the sum of:

(A) the property factor as calculated under Section 59-7-312;

(B) the payroll factor as calculated under Section 59-7-315; and

312 (C) the sales factor as calculated under Subsection (4)(e)(i); and

313 (ii) the denominator of the fraction is six.

314 (c) For the taxable year that begins on or after January 1, 2020, but begins on or before
315 December 31, 2020:

316 (i) the numerator of the fraction is the sum of:

317 (A) the property factor as calculated under Section 59-7-312;

318 (B) the payroll factor as calculated under Section 59-7-315; and

319 (C) the sales factor as calculated under Subsection (4)(e)(ii); and

320 (ii) the denominator of the fraction is 10.

321 (d) For a taxable year that begins on or after January 1, 2021, a phased-in sales factor
322 weighted taxpayer shall calculate the fraction as described in Subsection (2).

323 (e) (i) For the taxable year that begins on or after January 1, 2019, but begins on or
324 before December 31, 2019, the sales factor shall be:

325 (A) calculated as described in Section 59-7-317; and

326 (B) multiplied by four.

327 (ii) For the taxable year that begins on or after January 1, 2020, but begins on or before
328 December 31, 2020, the sales factor shall be:

329 (A) calculated as described in Section 59-7-317; and

330 (B) multiplied by eight.

331 (5) (a) The taxpayer shall determine the method for calculating the fraction for
332 apportioning business income to this state under this section on or before the due date for filing
333 the taxpayer's return under this chapter for the taxable year, including extensions.

334 (b) The method described in Subsection (5)(a) is in effect for the taxable year.

335 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
336 commission may make rules providing procedures for a taxpayer to make the election required
337 by ~~[Subsections (2) and (4)]~~ Subsection (3).

338 Section 4. Section **59-7-312** is amended to read:

339 **59-7-312. Property factor for apportionment of business income -- Mobile flight**
340 **equipment of an airline.**

341 (1) Except as provided in ~~[Subsection (2)]~~ Subsections (2) and (3), the property factor
342 is a fraction~~[-]~~:

(a) the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period; and

(b) the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(2) The average value of an airline's real and tangible personal property owned or rented and used in this state attributable to mobile flight equipment for purposes of the numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type by ~~[determining the product of]~~ multiplying:

(a) the total average value of the airline's mobile flight equipment of the aircraft type owned or rented and used during the tax period; and

(b) a fraction[;]:

(i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

(ii) the denominator of which is the airline revenue ton miles for the aircraft type.

(3) (a) For purposes of Subsection 59-7-302(3)(b)(i)(A) and subject to Subsection (3)(b), the property factor is a fraction:

(i) the numerator of which is the value of the property in this state that is attributable to economic activities that are classified in an excluded NAICS code; and

(ii) the denominator of which is the value of all property in this state.

(b) A taxpayer shall exclude property from the calculation of the property factor fraction in Subsection (3)(a) if the property may be attributed to economic activities in both excluded NAICS codes and NAICS codes that are not excluded NAICS codes.

Section 5. Section **59-7-315** is amended to read:

59-7-315. Payroll factor for apportionment of business income -- Compensation of flight personnel by an airline.

(1) Except as provided in ~~[Subsection (2)]~~ Subsections (2) and (3), the payroll factor is a fraction[;]:

(a) the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation[;]; and

(b) the denominator of which is the total compensation paid everywhere during the tax period.

(2) The total amount paid in this state during the tax period by an airline for

compensation attributable to the compensation of flight personnel for purposes of the numerator of the fraction described in Subsection (1) shall be calculated for each aircraft type by ~~[determining the product of]~~ multiplying:

(a) the total amount paid during the tax period by the airline to flight personnel for compensation for the aircraft type; and

(b) a fraction~~[-]~~:

(i) the numerator of which is the Utah revenue ton miles for the aircraft type; and

(ii) the denominator of which is the airline revenue ton miles for the aircraft type.

(3) (a) For purposes of Subsection 59-7-302(3)(b)(i)(B) and subject to Subsection (3)(b), the payroll factor is a fraction:

(i) the numerator of which is the amount of the payroll in this state that is attributable to economic activities that are classified in an excluded NAICS code; and

(ii) the denominator of which is the total amount of the payroll in this state.

(b) A taxpayer engaged in economic activities that are classified in an excluded NAICS code shall exclude an individual's payroll from the calculation of the payroll factor fraction in Subsection (3)(a) if the individual's payroll may be attributed:

(i) to economic activities in both excluded NAICS codes and NAICS codes that are not excluded NAICS codes; or

(ii) to providing management, finance, accounting, legal, or human resource services.

Section 6. Effective date.

This bill takes effect for a taxable year beginning on or after on January 1, 2019.